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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 290

PRAIRIE BAND OF THE POTTAWATOMIE TRIBE OF INDIANS; MRS. MINNIE EVANS, Whose Indian Name Is MINNIE WESHKEENOO; JOHN P. WAH-WASSUCK; ALFRED CURTIS PEQUANA; JAMES P. WAHBNOSAH and WILLIAM HALE,
Petitioners,

vs.

STEWART L. UDALL, Secretary of Interior; PHILLEO NASH, Commissioner of Indian Affairs, and BUFORD MORRISON, Area Field Representative.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered in the above entitled case on January 24, 1966.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court (R. 82-88) printed in Appendix B hereto, infra, p. A2.

The opinion of the Circuit Court of Appeals printed in Appendix C hereto, infra, p. A11 is reported in ..... F.2d .....

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 24, 1966, p. A11, infra. The jurisdiction of this Court is invoked under 28 U.S.C.A. §1361, §1353 and §1331.

QUESTION PRESENTED

Does the said court have jurisdiction to determine the right of petitioners to require officers of the government to distribute a court award to them.

STATUTES INVOLVED

The statutory provisions involved are 28 U.S.C.A. §1361, §1353 and §1331. They are printed in Appendix A, infra, p. A1.

STATEMENT

Petitioners bring this action as an identifiable group of the Pottawatomie Nation which group was in existence on June 5, 17, 1846, and petitioners further appear as Tribal Councillors and as the Tribal Claims Committee and as individual party plaintiffs. The said court has jurisdiction of this case based on 28 U.S.C.A. §1361, §1353 and §1331. which statutes gave jurisdiction to the United States Courts to determine an issue as here presented and to compel the United States through its officers or employees to perform their duty toward petitioners.

The petitioners were selected by the Prairie Band of the Pottawatomie Nation to pursue claims against the government and to pursue the instant case both as reflected by the Indian Claims Commission award (R. 7, 91, 94) and affidavits which were attached to the Record on Appeal to the Circuit.

The Indian Claims Commission award provided that the Pottawatomie Nation, of which the Prairie Band was a part, was to receive the award for the benefit of all descendants of said nation as the nation was constituted and recognized in 1846. Subsequent to the Indian Claims Commission award, congress authorized the use of appropriated funds to pay the descendants of the Pottawatomie Nation as that nation was created and recognized by the treaty of 1846.

After the Indian Claims Commission award and the congressional appropriation the defendants approved a distribution of the awarded funds contrary to the Indian Claims Commission award and contrary to the direction of the congressional appropriation.

The defendants had provided and approved a method of distribution based on allottees and their descendants and not on the basis of the Prairie Band Pottawatomie Nation as created and recognized by the treaty of 1846 nor on the descendants of said nation as it was constituted and recognized in said treaty. The defendants provided and approved a method of entitlement on a per capita basis with eligibility to be determined on the basis of allottees and descendants of allottees.

The defendants filed a motion for summary judgment stating that the said court had no jurisdiction to determine the issues presented by petitioners.

The District Court sustained the motion for summary judgment. Appendix B, p. A2. The United States Court of Appeals for the Tenth Circuit sustained the District Court. Appendix C, infra, p. A11. The said court has jurisdiction to determine and provide relief for petitioners.

REASONS FOR GRANTING THE WRIT

1. The Circuit Court has held 28 U.S.C.A., §1361 to not apply in requiring an officer or employee of the government to perform their function or their duty toward the petitioners in this case. The petitioners are a part of an almost extinct nation. Petitioners represent a group designated as the descendants of a certain treaty (1846). The lower courts' decisions prevents these petitioners from coming before a judiciary tribunal for the determination of a legal issue. The lower courts exclude petitioners and all others who may be in similar circumstances from presenting the issue of law and equity before a proper forum and in essence the United States through its courts has again deprived the Indian of their just determinations.

2. The lower courts' decisions have given an unwarranted construction to the jurisdiction statute urged by petitioners and the lower courts have imposed upon petitioners definition of inferiority which precludes justiciable decisions in contrast to their more worthy white brothers.

3. The lower courts have permitted, sanctioned, advocated, condoned and promoted exclusion of justice by the method of administrative agencies and excluded judicial, legal and equitable determinations by the courts. The instant case is an example of administrative supremacy under judicial determination, the result of which has enabled administrative czars to abuse administrational and discretionary issues without governmental supervision.

4. The Indian Claims Commission award and the congressional appropriations have both provided that the distribution of these funds in excess of $3,000,000.00 should be made to the descendants of the treaty whose forefathers had been cheated by the government. The defendants, whimsically not approving of this award or congressional appropriation, have provided and approved of another definable group to receive the appropriation. This group has been labeled by the defendants as the proper recipients of the money. Congress has entrusted to the executives of our government the fair distribution to the proper definable group. The executives of our government have once again engaged the Indian to a defeat and prevented his rightful receipt by the distribution of these funds to others than who should receive them.

5. Circuit Courts have held that judgment belongs to descendants of those affected by the inequitable treaties and that such defendants are identifiable groups who should receive awards such as in the instant case. *Minnesota Chippewa Tribe* v. *U. S.*, 315 F.2d 90

CONCLUSION

For the foregoing reasons this petition for Writ of Certiorari should be granted.

Respectfully submitted,

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